

SENATE BILL No. 227

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-11-5.

Synopsis: Department of correction disciplinary hearings. Establishes at each department of correction (DOC) correctional facility an independent disciplinary hearing board consisting of three members appointed by the governor. Requires the governor to appoint an independent hearing officer at each DOC correctional facility. Provides that a confined offender charged with misconduct may select two (rather than just one) lay advocates to represent the offender in a disciplinary hearing. Amends various provisions relating to the ability of a confined offender to confront and cross-examine witnesses and receive evidence at a disciplinary hearing.

Effective: July 1, 2010.

Taylor

January 11, 2010, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 227

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-11-5-1.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 1.3. As used in this chapter, "board" refers to the**
4 **independent disciplinary hearing board established under section**
5 **4.5 of this chapter.**

6 SECTION 2. IC 11-11-5-2 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. **(a)** The department
8 shall adopt rules for the maintenance of order and discipline among
9 committed persons. These rules must describe the conduct for which
10 disciplinary action may be imposed, the type of disciplinary action that
11 may be taken, and the disciplinary procedure to be followed. These
12 rules shall be made available to all committed persons. The disciplinary
13 action imposed must be proportionate to the seriousness of the
14 violation. For purposes of IC 4-22-2, the term "rule" as used in this
15 section relates solely to internal policy and procedure not having the
16 force of law.

17 **(b) A board is subject to rules adopted under this section.**



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SECTION 3. IC 11-11-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. The department **or a board** may impose any of the following as disciplinary action:

- (1) A report, which may be made part of the person's record.
- (2) Extra work.
- (3) Loss or limitation of privileges.
- (4) Change in work assignment.
- (5) Restitution.
- (6) Change in security classification.
- (7) Transfer to another facility or program.
- (8) Segregation from the general population of the facility or program for a fixed period of time.
- (9) Reassignment to a lower credit time class under IC 35-50-6-4.
- (10) Deprivation of earned credit time under IC 35-50-6-5.

SECTION 4. IC 11-11-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4.5. (a) There is established an independent disciplinary hearing board at each correctional facility to conduct hearings described in section 5 of this chapter. Each board consists of three (3) members appointed by the governor. A member:**

- (1) may not be an employee of the department at the time of the member's appointment;**
- (2) must demonstrate a basic understanding of the department, the correctional facilities, and the department's administrative and disciplinary procedures; and**
- (3) may not concurrently serve as an independent hearing officer under subsection (b).**

(b) The governor shall appoint an independent hearing officer at each correctional facility to do the following:

- (1) Review conduct reports.**
- (2) Conduct screening hearings.**
- (3) Conduct disposition hearings.**
- (4) Upon the request of a person charged with misconduct for evidence pertaining to the charge of misconduct:**
 - (A) determine whether the evidence exists; and**
 - (B) if the evidence exists, provide the evidence to the board.**

An independent hearing officer may not be an employee of the department at the time of the officer's appointment.

SECTION 5. IC 11-11-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) Before imposing any disciplinary action, the department shall afford the person charged with misconduct a hearing **before the independent disciplinary**

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1 **hearing board appointed under section 4.5 of this chapter** to
 2 determine ~~his~~ **the person's** guilt or innocence and, if guilty, the
 3 appropriate action. The charged person may waive ~~his~~ **the person's**
 4 right to a hearing. Also, before a charge is made, that person and a
 5 departmental employee may agree to the types of disciplinary action
 6 enumerated in sections 3(2) and 3(3) of this chapter if no record of the
 7 conduct or disciplinary action is placed in the person's file. In
 8 connection with the hearing, the person is entitled to:

9 (1) have not less than twenty-four (24) hours advance written
 10 notice of the date, time, and place of the hearing, and of the
 11 alleged misconduct, and the rule the misconduct is alleged to have
 12 violated;

13 (2) have reasonable time to prepare for the hearing;

14 (3) have an impartial decisionmaker;

15 (4) appear and speak in ~~his~~ **the person's** own behalf;

16 (5) call witnesses and present evidence unless the person
 17 conducting the hearing finds that to do so would subject a witness
 18 to a substantial risk of harm, or would result in the admission of
 19 irrelevant or repetitive testimony;

20 (6) confront and cross-examine witnesses; ~~unless the person~~
 21 ~~conducting the hearing finds:~~

22 (A) ~~that to do so would subject a witness to a substantial risk~~
 23 ~~of harm;~~

24 (B) ~~that to do so would result in the admission of irrelevant or~~
 25 ~~repetitive testimony; or~~

26 (C) ~~based upon good cause stated on the record; that a witness~~
 27 ~~is unavailable to attend the hearing;~~

28 (7) have advice and representation by ~~a lay advocate of his~~ **up to**
 29 **two (2) lay advocates of the person's** choice, if ~~that the~~ lay
 30 advocate is available in the institution at the time of the hearing,
 31 in those hearings based upon a charge of institutional misconduct
 32 when the department determines ~~he~~ **the person** lacks the
 33 competency to understand the issues involved or to participate in
 34 the hearing, or when the punishment may be that specified in:

35 (A) section 3(5) of this chapter if the restitution is more than
 36 two hundred dollars (\$200);

37 (B) section 3(8) of this chapter if the segregation is for more
 38 than fifteen (15) days; or

39 (C) section 3(6), 3(9), or 3(10) of this chapter;

40 (8) have a written statement of the findings of fact, the evidence
 41 relied upon, and the reasons for the action taken;

42 (9) have immunity if ~~his~~ **the person's** testimony is used in any

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criminal proceeding;

(10) have ~~his~~ **the person's** record expunged of any reference to the charge if ~~he~~ **the person** is found not guilty or if a finding of guilt is later overturned; and

(11) be reimbursed for state wages lost due to action taken pending the hearing if ~~he~~ **the person** is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing. **If a lay advocate of the charged person's choice is not available, the independent disciplinary hearing body may appoint a lay advocate from a list of eligible persons.**

(b) The department may not charge a committed person with a disciplinary rule violation unless it does so within ten (10) days of the date it becomes aware of that person's alleged involvement in misconduct.

(c) Consistent with the objective of adequate and effective representation and the integrity of the hearing system the department may adopt regulations which may limit the pool of persons eligible to advise and represent accused persons to inmates in the general population. In any event, facility or program employees and inmates may not directly or indirectly charge for advice or representation. **A regulation adopted under this subsection must allow an accused person to request up to two (2) lay advocates from the pool of eligible persons.**

(d) Any statement made by an accused person to departmental employees during the course of an investigation or hearing is not admissible against ~~him~~ **the person** in any criminal proceeding arising out of the same incident unless the accused:

(1) was informed:

(i) of ~~his~~ **the person's** right to remain silent;

(ii) that anything ~~he~~ **the person** says can and will be used against ~~him~~ **the person** in court;

(iii) of ~~his~~ **the person's** right to have an attorney present during any questioning;

(iv) ~~his~~ **the person's** right to have an attorney appointed for ~~him~~ **the person** if ~~he~~ **the person** is unable to afford an attorney; and

(v) that if ~~he~~ **the person** decides to answer any questions, ~~he~~ **the person** may stop answering at any time during the interrogation; and

(2) voluntarily, knowingly, and intelligently waived ~~his~~ **the**

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1 **person's** rights under subdivision (1) to remain silent or to have
2 an attorney present, or both.

3 **(e) No employee of the department or other individual may**
4 **participate in a hearing described in subsection (a) by deliberating,**
5 **discussing, or voting with the independent disciplinary hearing**
6 **board.**

7 **(f) The identity of an adverse witness must be disclosed in a**
8 **timely manner to a charged person in order to facilitate**
9 **confrontation and cross-examination under subsection (a)(6).**

10 **(g) This subsection applies to witness statements given under**
11 **subsection (a)(5) or (a)(6). A charged person is entitled to a copy of**
12 **each witness statement, including a witness statement given under**
13 **a request for confidentiality, unless:**

14 **(1) the witness statement is adverse to the person; and**

15 **(2) disclosure of the witness statement would breach the**
16 **facility's security.**

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